

HOUSE BILL 1785

By McDonald

AN ACT to amend Tennessee Code Annotated, Title 68,  
relative to waste disposal.

WHEREAS, the federal environmental protection agency has not adopted a comprehensive, uniform and protective regulatory framework for the disposal of coal combustion waste since the ash release disaster at the TVA Kingston fossil fuel power plant in December 2008; and

WHEREAS, the department of environment and conservation and the solid waste board have yet to propose new restrictions on the landfill disposal of coal combustion waste since the ash release disaster; and

WHEREAS, the current regulations allow the disposition of coal combustion waste to be used for construction fills without liners or other protective containment or monitoring requirements; and

WHEREAS, studies by the federal environmental protection agency now recognize increased adverse environmental impacts from coal combustion waste, including ash and air pollution scrubber systems; and

WHEREAS, the public health of Tennesseans is being adversely affected by the lack of proper containment in the landfill disposition and transportation of coal combustion waste; and

WHEREAS, because the filling of mine sites with coal ash has had catastrophic effects in other states, and the filling of quarries has resulted in discharges of leachate and the release of toxic pollutants into the groundwater, it is imperative that the department of environment and conservation carefully review the protective regulatory standards to be applied to landfills prior to approving any applications to accept coal combustion waste, including but not limited to,

applications to place such waste in former coal strip mine sites or other mines or quarries; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. In the event that the United States environmental protection agency proposes rules affecting the disposition or transportation of coal combustion wastes or coal combustion products, the commissioner of environment and conservation is authorized to suspend or otherwise modify the processing of any application for a permit under title 68, chapter 211, part 1, for a reasonable period to allow for the adoption of rules and the modification of the department's procedures for approval or disapproval of permits for disposal of coal combustion wastes or products. The department is authorized to use emergency rulemaking under title 4, chapter 5, part 2, for the purpose of promulgating rules that conform to the federal requirements. The department shall not issue coal ash structural fill permits by rule during the twelve-month period immediately following the effective date of this act.

SECTION 2. Tennessee Code Annotated, Title 68, Chapter 211, Part 1, is amended by adding the following as a new section thereto:

68-211-125.

(a) "Coal combustion waste" includes fly ash, bottom ash, boiler slag, coal refuse waste, and wastes from fluidized-bed combustion units.

(b) Notwithstanding any other law, rule, or regulation to the contrary, all permits issued for the disposition of coal ash and other coal combustion wastes into landfills shall comply with the following criteria:

(1) Coal combustion wastes shall be disposed of only in Class I landfills or Class II landfills that meet the requirements for Class I landfills for geologic buffers, liner systems, a leachate collection system and ground water protection,

and all other regulatory requirements for which a waiver or variance has not been granted pursuant to § 68-211-106(a)(2);

(2) Notwithstanding any exception in § 68-211-106, prior to the issuance of a permit for a coal combustion waste disposal site, the department shall require the applicant to provide all information that is necessary to determine that the proposed site is safe for the long-term disposal of coal combustion waste without potential injury to surface waters, impounded waters, groundwater quality, or public or private drinking water supplies, and that there is no significant potential for contamination of such water supplies. The determination shall be included as part of the permit, if issued, and the basis for such determination shall be kept on file by the department;

(3) Before a landfill permitted under this chapter prior to the effective date of this selection may accept coal combustion waste, the generator of such waste shall submit a special waste approval request to the department with the information required by regulation. If the department approves the request, the department may designate a specific area of the landfill for disposal of the waste. The applicant shall publish a notice in a daily or weekly newspaper of general circulation in the county in which the landfill is located, which shall contain a chemical and physical description of the waste, the amounts and frequencies of such waste that is to be managed at the landfill, a description of the processes or operations generating the waste, identification of the landfill where the applicant wants to dispose of the waste, at least one (1) location at which a copy of the application and related materials is available for public examination, and information on how the applicant may be contacted to inquire or comment upon the application. The applicant shall provide the department a copy of the

published notice. A special waste approval may not be effective until thirty (30) days after the public notice has been published;

(4) For a new or amended permit the department shall require analysis of the composition of the coal combustion waste proposed to be disposed of and shall require prompt notice of changes in the composition or volume of such waste that may affect the toxicity or may affect the solubility or other means of release of pollutants into the environment;

(5) Prior to the issuance of a permit for a coal combustion waste disposal site the department shall require the applicant to provide a description of the containment measures used during transport from the site of generation to the disposal site to avoid leakage, spillage, or airborne release, and the availability of adequate and timely emergency response to accidental releases of coal combustion waste. The application documents or the permit conditions shall describe the means of transport, proposed routes, and the containment of coal combustion waste during transport which shall be part of the plans required by § 68-211-105;

(6) No permit for the disposal of coal combustion wastes shall be granted without solid waste permit conditions governing the air quality impacts of disposal operations under the permit; and

(7) In addition to any liability of the owner or operator of the landfill, the generator of coal combustion wastes remains liable for environmental injuries arising from the disposal of the waste.

SECTION 3. Tennessee Code Annotated, Section 68-211-106, is amended by adding the following language as a new subdivision (f)(7)(H) and redesignating the remaining subdivisions accordingly:

(H) Any variances or waivers proposed, the information provided by the applicant under § 68-211-125(b)(2), a summary of the department's determination made under § 68-211-125(b)(2) and an invitation for the public to comment on the department's determination.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.